

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

<b>VERNON ROBERTS</b>	:	
	:	
<b>and</b>	:	Civil Action No. 6:21-CV-00406
	:	
<b>CONRAD LEE</b>	:	
	:	<b><u>Jury Demand Endorsed Hereon</u></b>
<b>and</b>	:	
	:	
<b>KENNETH GILES</b>	:	
	:	
<b>and</b>	:	
	:	
<b>JOSE GALLEGOS</b>	:	
	:	
<b>and</b>	:	
	:	
<b>PEDRO BALLESTEROS</b>	:	
	:	
<b>and</b>	:	
	:	
<b>JOSE BALLESTEROS</b>	:	
	:	
<b>and</b>	:	
	:	
<b>OMAR FIERRO</b>	:	
	:	
<b>and</b>	:	
	:	
<b>JUAN GONZALEZ, JR.</b>	:	
	:	
<b>and</b>	:	
	:	
<b>GIOVANNI MENDEZ</b>	:	
	:	
<b>and</b>	:	
	:	
<b>ABIEL MENDEZ</b>	:	
	:	
<b>and</b>	:	
	:	
<b>JEROME WHITEHAIR</b>	:	
	:	

**and**

**FIDENCIO FLORES**

**Plaintiffs, for themselves and all**  
**others similarly situated,**

**v.**

**TECHSERV CONSULTING AND**  
**TRAINING, LTD.**

**and**

**JOHNNY RANDALL STAINES,**

**and**

**RANDALL WISENBAKER,**

**Defendants.**

**PLAINTIFFS' FIRST AMENDED COLLECTIVE ACTION COMPLAINT**

Now comes Plaintiffs Vernon Roberts, Conrad Lee, Kenneth Giles, Jose Gallegos, Pedro Ballesteros, Jose Ballesteros, Omar Fierro, Juan Gonzalez, Jr., Giovanni Mendez, Abiel Mendez, Jerome Whitehair, and Fidencio Flores, on behalf of themselves and all others similarly situated as set forth herein, and proffer this First Amended Collective Action Complaint for damages against Defendants TechServ Consulting and Training, Ltd. ("TechServ"), Johnny Randall Staines, and Randall Wisenbaker (referred to herein collectively as "Defendants").

**NATURE OF SUIT**

1. Plaintiffs, individually and on behalf of other members of the general public similarly situated as set forth herein, seek to recover overtime wages owed pursuant to the Fair Labor Standards Act, 29 U.S.C. § 216(b).

### **JURISDICTION AND VENUE**

2. This action is brought pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201, *et seq.*, and 28 U.S.C. §1331.

3. Venue is proper in this forum pursuant to 28 U.S.C. §1391, because Defendants’ principal place of business is in Tyler, Texas in the Eastern District of Texas.

### **PARTIES**

4. Plaintiff, Vernon Roberts ("Plaintiff Roberts"), is an individual and United States citizen.

5. Plaintiff Roberts is a resident of the State of Texas.

6. Plaintiff Roberts started working for Defendants in March 2017 and still continues to work for Defendants.

7. Over the course of his employment, Plaintiff Roberts has worked as a Transmission Construction Representative which is commonly referred to as a “TCR.”

8. Plaintiff, Conrad Lee ("Plaintiff Lee"), is an individual and United States citizen.

9. Plaintiff Lee is a resident of the State of Texas.

10. Plaintiff Lee started working for Defendants in August 2016 and still continues to work for Defendants.

11. Over the course of his employment, Plaintiff Lee has worked as a Transmission Construction Representative (“TCR”).

12. Plaintiff, Kenneth Giles ("Plaintiff Giles"), is an individual and United States citizen.

13. Plaintiff Giles is a resident of the State of Texas.

14. Plaintiff Giles started working for Defendants in January 2017 and still continues to work for Defendants.

15. Over the course of his employment, Plaintiff Giles has worked as a Transmission Construction Representative (“TCR”).

16. Plaintiff, Jose Gallegos ("Plaintiff Gallegos"), is an individual and United States citizen.

17. Plaintiff Gallegos is a resident of the State of Texas.

18. Plaintiff Gallegos started working for Defendants in January 2018 and still continues to work for Defendants.

19. Over the course of his employment, Plaintiff Gallegos has worked as a Transmission Construction Representative (“TCR”).

20. Plaintiff, Pedro Ballesteros ("Plaintiff P. Ballesteros"), is an individual and United States citizen.

21. Plaintiff P. Ballesteros is a resident of the State of Texas.

22. Plaintiff P. Ballesteros worked for Defendants in 2016-2017 then again starting in August 2018 and continues to work for Defendants.

23. Over the course of his employment, Plaintiff P. Ballesteros has worked as a Transmission Construction Representative (“TCR”).

24. Plaintiff, Jose Ballesteros ("Plaintiff J. Ballesteros"), is an individual and United States citizen.

25. Plaintiff J. Ballesteros is a resident of the State of Texas.

26. Plaintiff J. Ballesteros started working for Defendants in September 2016 and still continues to work for Defendants.

27. Over the course of his employment, Plaintiff J. Ballesteros has worked as a Transmission Construction Representative (“TCR”).

28. Plaintiff, Omar Fierro ("Plaintiff Fierro"), is an individual and United States citizen.

29. Plaintiff Fierro is a resident of the State of Texas.

30. Plaintiff Fierro started working for Defendants in February 2018 and still continues to work for Defendants.

31. Over the course of his employment, Plaintiff Fierro has worked as a Transmission Construction Representative (“TCR”).

32. Plaintiff, Juan Gonzalez, Jr ("Plaintiff Gonzalez"), is an individual and United States citizen.

33. Plaintiff Gonzalez is a resident of the State of Texas.

34. Plaintiff Gonzalez started working for Defendants in March 2018 and still continues to work for Defendants.

35. Over the course of his employment, Plaintiff Gonzalez has worked as a Transmission Construction Representative (“TCR”).

36. Plaintiff, Giovanni Mendez ("Plaintiff G. Mendez"), is an individual and United States citizen.

37. Plaintiff G. Mendez is a resident of the State of Texas.

38. Plaintiff G. Mendez started working for Defendants in December 2016 and still continues to work for Defendants.

39. Over the course of his employment, Plaintiff G. Mendez has worked as a Transmission Construction Representative (“TCR”).

40. Plaintiff, Abiel Mendez ("Plaintiff A. Mendez"), is an individual and United States citizen.

41. Plaintiff A. Mendez is a resident of the State of Texas.

42. Plaintiff A. Mendez started working for Defendants in May 2015 and still continues to work for Defendants.

43. Over the course of his employment, Plaintiff A. Mendez has worked as a Transmission Construction Representative ("TCR").

44. Plaintiff, Jerome Whitehair ("Plaintiff Whitehair"), is an individual and United States citizen.

45. Plaintiff Whitehair is a resident of the State of Texas.

46. Plaintiff Whitehair started working for Defendants in October 2017 and still continues to work for Defendants.

47. Over the course of his employment, Plaintiff Whitehair has worked as a Transmission Construction Representative ("TCR").

48. Plaintiff, Fidencio Flores ("Plaintiff Flores"), is an individual and United States citizen.

49. Plaintiff Flores is a resident of the State of Texas.

50. Plaintiff Flores worked for Defendants from March 2016 to October 2021.

51. Over the course of his employment, Plaintiff Whitehair has worked as a Transmission Construction Representative ("TCR").

52. Defendant TechServ Consulting and Training Ltd. ("TechServ") is a Texas limited liability company with its principal place of business in Tyler, Texas.

53. Defendant Johnny Randall Staines is a resident of Texas and owns, in whole or in part, Defendant TechServ. Defendant Staines is also responsible for TechServ's business operations, including setting payroll policies and procedures.

54. Defendant Randall Wisenbaker is a resident of Texas and owns, in whole or in part, Defendant TechServ. Defendant Wisenbaker is also responsible for TechServ's business operations, including setting payroll policies and procedures.

55. Defendants are "employers" as that term is defined under the FLSA and Ohio law.

56. During the relevant times herein, Defendants benefitted from the work performed by Plaintiffs.

57. At all times relevant to this action, Defendants have been engaged in commerce or in the production of goods for commerce, and/or the business activities of Defendants constituted an enterprise engaged in commerce within the meaning of the FLSA.

58. Defendants' employees were engaged in interstate commerce and Defendants had annual gross volume sales and/or business in an amount not less than \$500,000.00.

59. Defendants, at all times relevant hereto, were fully aware of the fact that they were legally required to comply with the wage and hour laws of the United States.

60. During the relevant times herein, Defendants had knowledge of and acted willfully with regard to their conduct described herein.

61. Defendants are in possession and control of necessary documents and information from which Plaintiff would be able to precisely calculate damages.

### **FACTUAL BACKGROUND**

62. Defendant TechServ provides consulting and services to the utility industry.

63. Defendant TechServ's biggest client is American Electric Power ("AEP").

64. Defendant TechServ employs TCRs to work on AEP projects. The TCRs are frequently on job sites to ensure that subcontractors are performing the work up to AEP standards. TCRs also make sure other aspects of the job run smoothly.

65. AEP pays Defendant TechServ an agreed upon amount based on the number of hours worked by TCR employees.

66. From October 2018 through approximately January 2021, Plaintiffs and other similarly situated TCRs reported their hours each week to TechServ and were paid based on the number of hours they worked.

67. Plaintiffs and other similarly situated TCRs were paid biweekly.

68. From October 2018 through approximately January 2021, Plaintiffs and other similarly situated TCRs were paid a base minimum salary equivalent to approximately 14-19 hours of work per work week. In addition to the guaranteed minimum, Plaintiffs and other similarly situated TCRs were paid an hourly rate for all hours worked beyond the guaranteed minimum hours.

69. Plaintiffs and other similarly situated TCRs routinely work more than 40 hours in a workweek.

70. From October 2018 through approximately January 2021, Defendants did not pay Plaintiffs and other similarly situated TCRs overtime at a rate of one and one-half times their regular rate of pay for all hours worked over 40 in a workweek.

71. Plaintiffs and other similarly situated TCRs' guaranteed minimum salary does not have a reasonable relationship to the total amount of compensation actually earned.

72. TCRs previously filed collective actions in the Northern District of Ohio, *Robison v. TechServ Consulting and Training, Ltd.* (Case No. 3:19-cv-896) and *Hartman v. TechServ*



*Consulting and Training, Ltd.* (Case No. 3:20-cv-2386). Those actions have been resolved and Plaintiffs did not join either of those actions.

**FIRST CAUSE OF ACTION**  
**FLSA Collective Action**  
**FLSA, 29 U.S.C. §201, *et seq.* - Failure to Pay Overtime**  
**(Against All Defendants)**

73. All of the preceding paragraphs are realleged as if fully rewritten herein.

74. Plaintiffs brings this FLSA overtime claim pursuant to 29 U.S.C. §216(b) as a representative action. Plaintiffs have filed consents be party plaintiffs in this actions. See Combined Consents attached hereto as Exhibit A.

75. The FLSA Class is defined as:

**All TCRs who currently or formerly performed work for Defendant TechServ, who (1) did not opt-in or join the previous collective actions (*Robison v. TechServ Consulting and Training, Ltd.* (Case No. 3:19-cv-896) and *Hartman v. TechServ Consulting and Training, Ltd.* (Case No. 3:20-cv-2386), and; (2) were not paid time and one half their regular rate of pay for hours worked over forty (40) during a workweek, at any time during the 3 years prior to the filing of this action through the date Defendant changed its policy in January 2021.**

76. This FLSA claim is brought as an "opt-in" collective action pursuant to 29 U.S.C. §216(b) as claims for overtime compensation, compensation withheld in violation of the FLSA, liquidated damages and attorneys' fees and costs under the FLSA. In addition to Plaintiffs, numerous Similarly Situated Persons ("SSPs") in the FLSA Class have been denied proper compensation due to Defendants' payroll policies and practices.

77. These SSPs are known to Defendants and are readily identifiable through Defendants' pay records. These individuals may readily be notified of this action, and allowed to opt into it pursuant to 29 U.S.C. §216(b), for the purpose of collectively adjudicating their claims for overtime compensation, liquidated damages, attorneys' fees and costs under the FLSA

78. From October 2018 through approximately January 2021, Defendants paid Plaintiffs and SSPs on an hourly basis.

79. Plaintiffs and SSPs were paid straight time for all hours worked, including hours worked in excess of 40 in a workweek.

80. Plaintiffs and SSPs' guaranteed minimum pay was based on a certain number of hours worked.

81. Plaintiffs and SSPs' guaranteed minimum pay did not have a reasonable relationship to the total compensation earned by Plaintiffs and SSPs.

82. Defendants knew or should have known that the applicable pay structure violated the FLSA.

83. During the past three years, Defendants have knowingly and willfully failed to pay Plaintiffs for all hours worked over 40 in a workweek.

84. As a direct and proximate result of Defendants' conduct, the Plaintiffs have suffered damages. Plaintiffs seek unpaid compensation, liquidated damages or interest, and attorneys' fees/costs, and all other remedies available.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the FLSA Class demand relief from Defendants as follows: an award against Defendants in an amount equal to the liability, losses, damages, liquidated damages, attorneys' fees, costs, expenses and any other amounts available under the law incurred as a result of Defendants' violations.

Respectfully submitted,

/s/ Greg R. Mansell

Greg R. Mansell (Ohio Bar #0085197)

(Greg@MansellLawLLC.com)

**Mansell Law, LLC**

1457 S. High St.

Columbus, OH 43207

Ph: 614-796-4325

Fax: 614-547-3614

*Counsel for Plaintiffs*

**JURY DEMAND**

Plaintiffs hereby request a jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

/s/ Greg R. Mansell

Greg R. Mansell (0085197)

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**VERNON ROBERTS, *et al.***, for  
themselves and others similarly situated

Plaintiffs,

VS.

**TECHSERV CONSULTING AND  
TRAINING, LTD, *et al.***

Defendants.

[illegible]


Civil Action No. 6:21-CV-00406

## NOTICE OF CONSENT

I hereby consent, opt-in, and agree to become a party-plaintiff in the above captioned action. I agree to be represented by Mansell Law, LLC. I understand that this lawsuit is being brought under the Fair Labor Standards Act. In addition, I understand by filing this consent, I will be bound by the judgment of the Court on all issues in this case.

Jan 7, 2022

Date \_\_\_\_\_

  
Jose G Ballasteros (Jan 7, 2022 15:10 CST)

Signature

Jose G Ballesteros

Name

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Jan 7, 2022

Date \_\_\_\_\_

  
Pedro Ballester

Pedro Ballesteros (Jan 7, 2022 14:25 CST)

Signature

# Pedro Ballesteros

Name



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Jan 10, 2022

Date \_\_\_\_\_

Fidencio Jaime Flores

Fidencio Jaime Flores (Jan 10, 2022 08:57 MST)

Signature

# Fidencio Jaime Flores

Name





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Jan 7, 2022

Date \_\_\_\_\_

*Kenneth Giles*  
Kenneth Giles (Jan 7, 2022 14:39 CST)

Signature

# Kenneth Giles

Name

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**VERNON ROBERTS, *et al.***, for  
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Jan 10, 2022

Date \_\_\_\_\_

Juan Gonzalez Jr  
Juan Gonzalez Jr (Jan 10, 2022 11:59 CST)

Signature

Juan Gonzalez Jr

Name









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Jan 7, 2022

Date \_\_\_\_\_

  
Jerome Whitehair (Jan 7, 2022 14:50 CST)

Signature

# Jerome Whitehair

Name